



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/20/03	Bill No:	AB 1073
Tax:	Sales and Use	Author:	Dutton
Board Position:		Related Bills:	

BILL SUMMARY

This bill would provide a sales and use tax exemption for the sale and purchase of qualified nonprescription drugs.

ANALYSIS

Current Law

Under existing law, sales or use tax applies to all sales or purchases of tangible personal property, unless otherwise exempted or excluded from the computation of sales or use tax.

Existing law provides a number of exemptions and/or exclusions from the sales and use tax. For example, the sales and use tax law contains the following exemptions for “necessities of life”:

- food for consumption at home (Section 6359)
- prescription medicines (Section 6369)
- gas, electricity, and water (Section 6353)
- “food” animals, such as cows, pigs and chickens, and “food” plants, such as asparagus, nut trees, and strawberry plants (Section 6358)

Under current law, sales of over-the-counter medicines are generally subject to tax. However, sales of over-the-counter medicines by a registered pharmacist pursuant to a prescription by a physician, dentist or podiatrist qualify for the prescription medicine exemption under Section 6369. Therefore, over-the-counter sales of such items as aspirin, cough syrups, and throat lozenges by a registered pharmacist are exempt from tax under existing law provided they are prescribed by a physician, dentist, or podiatrist. In addition, sales of over-the-counter medicines to a health facility, such as a hospital, that are later furnished to patients in that facility pursuant to the order of a physician, are also exempt from tax under the prescription medicine exemption contained in Section 6369.

Proposed Law

This bill would add Section 6369.6 to the Revenue and Taxation Code to create a sales and use tax exemption for the sale of, or storage, use or other consumption of qualified nonprescription drugs.

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This bill defines the term “qualified nonprescription drug” to mean a nonprescription drug, as defined in Section 4025.1 of the Business and Professions Code, that meets the following conditions:

- An item intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.
- An article, other than food, intended to affect the structure or any function of the body of man or other animals.
- An article intended for use as a component part of any article specified above.
- The label of which identifies the article as a drug by containing one or both of the following:
 - A "Drug Fact" box found on the label and as required pursuant to Section 201.66 of Title 21 of the Code of Federal Regulations.
 - A statement of the "active ingredient or ingredients," with a list of those ingredients contained in the article.

The provisions of the bill would become effective immediately, but become operative on the first day of the first calendar quarter commencing more than 90 days after the bill is enacted.

Background

Other bills that would have provided a sales and use tax exemption for the sale of nonprescription drugs have been introduced in the last several years.

Assembly Bill 5 (Battin), introduced during the 1999 Legislative Session, would have provided a sales and use tax exemption for sale and purchase of baby diapers and over-the-counter drugs. AB 5 was never heard in committee.

Assembly Bill 13 (Dickerson, et al.), introduced during the 1999 Legislative Session, would have provided a sales and use tax exemption for sale and purchase of over-the-counter medicines and incontinence supplies. AB 13 failed to pass out of the Assembly Revenue and Taxation Committee.

Assembly Bill 2713 (Olberg), introduced during the 2000 Legislative Session, would have provided a sales and use tax exemption for the sale and purchase of over-the-counter medicines to any person 55 years of age or older. AB 2713 failed to pass out of the Assembly Revenue and Taxation Committee.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by author and is intended to make vital nonprescription medicine more affordable for Californians.
2. **Definition of qualified items.** This bill defines the term "qualified nonprescription drug" to mean a nonprescription drug as defined in Section 4025.1 of the Business and Professions Code. Section 4025.1 of the Business and Professions Code

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provides that a nonprescription drug means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

3. **Proposed exemption would apply to drugs for animals as well as humans.** The definition of "qualified nonprescription drugs" would include articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals. Current law provides a sales and use tax exemption for the sale of drugs or medicines for use in the prevention or control of disease in animal life, the products of which ordinarily constitute food for human consumption, such as cows, pigs, and chickens. The proposed exemption in this bill would also provide a sales and use tax exemption for the sale of drugs and medicines to be administered to dogs, cats, horses, and other non-food animals.
4. **Types of items qualifying for the proposed exemption.** Typical over-the-counter nonprescription medicines, such as aspirin, cold and flu remedies, cough syrups, and allergy medications would qualify for the proposed exemption. Other items that could qualify for the proposed exemption, provided they are labeled accordingly, would include dietary supplements, vitamins, weight gain/loss products, and other nutritional supplements provided they do not qualify as a food product. Other items that are worn on the body, such as ace bandages, splints, and braces would not qualify for the proposed exemption.

COST ESTIMATE

Some costs would be incurred in revising returns, regulations and publications. A detailed estimate of the workload impact is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Under this bill, a qualified nonprescription drug is defined by Section 4025.1 of the Business and Professions Code, and is a non-food product intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals. Additionally, this bill would require that those nonprescription drugs have a "Drug Facts" box found on the label and/or a statement of the "active ingredient or ingredients."

According to the Consumer Healthcare Products Association (CHPA, formerly the Non-Prescription Drug Manufacturers' Association), in 2001 total sales in the U.S. of over-the-counter medicines (OTC's) was estimated to be \$22.3 billion. According to the Dietary Supplement Information Bureau, the total expenditures in the U.S. on dietary supplements, not including sports nutrition products and meal supplements for 2000 are estimated to be \$13.1 billion.

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This bill would also exempt nonprescription drugs for animals. According to the American Pet Products Manufacturers Association, total U.S. pet industry expenditures for 2001 are estimated to be \$28.5 billion. We have no information regarding the portion of the amount that would be for qualified nonprescription drugs. However, if only 5 percent of the amount is comprised of qualified nonprescription drugs, that total would be \$1.4 billion.

Therefore the total US expenditures for qualified nonprescription drugs are estimated to be \$36.8 billion (\$22.3 billion + \$13.1 billion + \$1.4 billion). Since California comprises 12 percent of the total population, the total expenditures that would qualify under this bill are estimated to be \$4.4 billion (\$36.8 billion X .12).

Revenue Summary

Exempting \$4.4 billion in purchases of qualified nonprescription drugs from the sales and use tax would result in the following revenue loss:

	<u>Revenue Loss</u>
State loss (5%)	\$ 220.0 million
Local loss (2.25%)	\$ 99.0 million
Special Taxing District loss (0.67%)	<u>\$ 29.5 million</u>
Total	<u>\$ 348.5 million</u>

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